



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

IN THE MATTER OF CLAIM AGAINST THE
DEALER BOND OF LEN DUDAS MOTORS,
INC.

Case No. TR-01-0038

FINAL DECISION

Mr. Robert Sturrock filed a claim on or about May 16, 2001 with the Wisconsin Department of Transportation (the "Department") against the motor vehicle dealer bond of Len Dudas Motors, Inc. (the "Dealer"). On July 10, 2001, the claim, along with the documents gathered by the Department in its investigation, was referred to the Division of Hearings and Appeals for hearing. The undersigned invited the parties to file any additional information they wished to have considered before issuance of a preliminary determination. The Dealer sent a letter dated August 20, 2001, and provided also a letter from the Department to Mr. Sturrock dated June 29, 2001. Mr. Sturrock did not submit additional information.

On February 12, 2002, the undersigned issued a Preliminary Determination and informed the parties by letter addressed as shown below that if no timely objection to the Preliminary Determination were received by March 14, 2002, then the Preliminary Determination would be subject to adoption as the Final Decision in the matter. The undersigned has not received any objections to the Preliminary Determination. Accordingly, the Preliminary Determination is adopted as the final decision of the Department of Transportation pursuant to Wis. Adm. Code § Trans 140.26(5)(d).

The parties to this proceeding are certified as follows:

Mr. Robert Sturrock
3503 Bush Street
Stevens Point, WI 54481

Capitol Indemnity Corporation
P.O. Box 5900
Madison, WI 53705-0900

Len Dudas Motors, Inc.
3305 Main Street
Stevens Point, WI 54481

FINDINGS OF FACT

1. Len Dudas Motors, Inc. (the "Dealer") is a motor vehicle dealer licensed by the Department pursuant to Wis. Stat. § 218.0111 (1999-2000). The Dealer's facilities are located at 3305 Main Street in Stevens Point, Wisconsin.

2. The Dealer has had surety bond number LP578662, issued by Capitol Indemnity Corporation, continuously in force since January 1, 1994. A separate bond is renewed annually for calendar year periods, with a separate face amount of the bond applying each calendar year.
3. On or about July 16, 1999, the Dealer sold Sturrock a 1994 Volkswagen Passat, VIN WVWJF4310RE008467 (the "Vehicle"), for \$12,995.00 plus taxes and fees of \$210.75 for a total cost of \$13,205.75. The Vehicle was sold "As Is" with no warranties, expressed or implied.
4. The Dealer prepared and displayed a Wisconsin Buyers Guide for the Vehicle indicating that there were no "corrective welds or other evidence of repair to strut tower, floor pan, frame or structural portion of the unibody."
5. The Vehicle had been in an accident on September 22, 1994, for whom the insured was one Michelle M. Rozumialski. A body shop owned and operated by the Dealer completed repairs to the Vehicle in 1994. The cost of the repairs totaled \$6,489.67. The repairs included repairs to the frame and structural portion of the unibody.
6. When the Dealer performed the used vehicle inspection in 1999, the Dealer did not know and reasonably would not have known that the Dealer's body shop had repaired the frame and structural portion of the unibody on the Vehicle five years before in 1994.
7. The Dealer did not discover the repairs to the frame and structural portion of the unibody in the course of conducting the used vehicle inspection. The 1994 repairs to the frame and the structural portion of the unibody were not discoverable in the exercise of reasonable care in conducting a used vehicle inspection. The Dealer exercised reasonable care in conducting the used vehicle inspection on the Vehicle.
8. When Sturrock purchased the Vehicle, he asked the salesperson whether the Vehicle had been in an accident. The salesperson advised him that it had not. There is insufficient evidence to establish that this misrepresentation was a knowing misrepresentation by the salesperson.
9. Sturrock owned and operated the Vehicle until about June 19, 2000, when he traded it in to a different dealer in Stevens Point -- Courtesy Motors. Courtesy Motors gave Sturrock a trade-in allowance of \$8,890 on the Vehicle against the purchase of a 2000 model year Mazda 626.
10. After accepting the Vehicle on the trade-in, Courtesy Motors conducted a used vehicle inspection and did not discover the 1994 repairs to the frame or the structural portion of the unibody. Courtesy Motors later sold the Vehicle to a third party and thereafter learned about the 1994 repairs. Courtesy eventually reacquired the Vehicle from the person to whom it had sold the Vehicle.
11. Courtesy Motors notified Sturrock of the repairs to the frame and the structural portion of the unibody that were completed in 1994. On May 16, 2001 Sturrock filed a dealer bond claim totaling \$13,978.93, which included a claim for compensation for the purchase price for the Vehicle plus repairs totaling \$773.18, which included the following:
 - a. Four Wheel Alignment \$48.64
 - b. Replace Left Front Wheel Bearing 232.48

- c. Lube, oil, filter and replace left ball joint 157.06
 - d. Lube, oil, filter and mount & balance two tires 169.00
12. The repairs and maintenance for which Sturrock seeks compensation were not necessitated by the damage to the frame or structural portion of the unibody that was repaired in 1994.
13. Sturrock has not established that he suffered an actual loss as a result of the non-disclosure of the damage and repairs to the frame and structural portion of the unibody in 1994. The 1994 damage and repairs affected neither the 1999 purchase price nor the 2000 trade-in valuation. Also, none of the repairs or maintenance for the Vehicle for which Sturrock has sought compensation was the result of the repaired damage to the frame and unibody.
14. The Dealer's failure to disclose the 1994 damage and repairs was not an act for which its motor vehicle dealer's license may be revoked or suspended.
15. The Dealer's failure to disclose the 1994 damage and repairs did not cause any actual loss to Sturrock.
16. Sturrock's bond claim was filed within three years of the ending date of the period the Capitol Indemnity bond was in effect and thus the claim in timely.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth in the Wisconsin Administrative Code at Chapter Trans 140, Subchapter II. Section Trans 140.21(1) provides in relevant part as follows:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116(1)(a) to (gm), (im)2., (j), (jm), (k), (m), (n), (nm), or (p), Stats.

* * * *

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow a claim a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

Even though the Dealer performed repairs to the frame and structural portion of the unibody in 1994, I find the evidence insufficient to establish that the Dealer knew or should have known of the 1994 damage and repairs when it conducted the used vehicle inspection in 1999. The passage of five years between the repairs and the subsequent used vehicle inspection makes the repairs performed too remote in time to impute constructive knowledge of the repairs. There is insufficient evidence to support a finding that the Dealer had actual knowledge of having performed the 1994 repairs when it conducted the used vehicle inspection in 1999.

I find also that the 1999 repairs were not discoverable in the exercise of reasonable care by the Dealer. Dealers are required to disclose information in the Wisconsin Buyers Guide that can be found “using reasonable care.” Wis. Admin. Code § Trans 139.04(4). “Reasonable care” is defined in part as “a standard that requires an ... exterior inspection, an under-hood and under-vehicle inspection.” Wis. Admin. Code § Trans 139.02(15)(a). The fact that Courtesy Motors performed a used vehicle inspection on the Vehicle about one year after the Dealer performed its inspection and also failed to discover the 1994 damage and repairs is strong corroboration that the 1994 damage and repairs were not discoverable in the exercise of reasonable care. Accordingly, the Dealer did not violate Wis. Admin. Code § Trans 139.04(4) in failing to discover and to disclose the evidence of the repairs in the Wisconsin Buyers Guide.

Even if I were to find that the Dealer should have disclosed the 1994 repairs, Sturrock would not be entitled to recover because he has not demonstrated that the non-disclosure caused him an actual loss. When Sturrock bought the Vehicle in 1999 the purchase price was based upon the common erroneous understanding that the Vehicle had no repaired damage to the frame or structural portion of the unibody. When Sturrock traded the Vehicle to Courtesy Motors in 2000, Courtesy similarly assigned a trade-in value based upon the common erroneous understanding that the Vehicle had no such repairs. Accordingly, Sturrock has not demonstrated that he suffered an actual loss relating the valuation of the Vehicle when he bought and sold it as a result of the nondisclosure of the 1994 repairs. Also, Sturrock has not demonstrated that the compensation for the repairs and maintenance to the Vehicle for which he seeks compensation were caused by the 1994 damage to the frame and structural portion of the unibody.

CONCLUSIONS OF LAW

1. The claim of Robert Sturrock arose on July 16, 1999, the date he purchased the Vehicle from the Dealer. The surety bond issued to the Dealer by Capitol Indemnity Corporation was in effect at this time. The claim arose during the period covered by the surety bond.
2. Sturrock filed a claim against the motor vehicle dealer bond of the Dealer on or about May 16, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. The claim is timely filed pursuant to Wis. Adm. Code § Trans 140.21(1)(d).
3. The Dealer’s failure to disclose the 1994 repairs to the frame or structural portion of the unibody was not an act that would be grounds for suspension or revocation of its motor vehicle dealer license under Wis. Adm. Code § Trans 140.21(1)(c).
4. Even if the Dealer’s failure to disclose the 1994 repairs constituted an act that would be grounds for suspension or revocation of its motor vehicle license under Wis. Admin. Code §

140.21(1)(c), Sturrock has not suffered an actual loss as a result of the disclosure, and thus he still would not be entitled to recovery of compensation for his claim under the bond.

5. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Robert Sturrock is DENIED.

Dated at Milwaukee, Wisconsin on March 19, 2002.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
819 N. 6th Street, Room 92
Milwaukee, Wisconsin 53203-1685
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By: _____

William S. Coleman, Jr.
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.